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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,135	01/14/2004	Dale Christopher Miller	54568/296994	3827

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EXAMINER

MANIWANG, JOSEPH R

ART UNIT	PAPER NUMBER.
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2144

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,135

Applicant(s)

MILLER, DALE CHRISTOPHER

Examiner

Joseph R. Maniwang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

2. Claims 7-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Flender et al. (U.S. Pat. App. Pub. 2003/0204437), hereinafter referred to as Flender.
3. Regarding claims 7, 12, and 15, Flender disclosed a system comprising a host computing device capable of interacting with a wireless network (see paragraph [0015]); and at least one client device capable of interacting with a wireless network (see paragraphs [0016], [0035], [0039]); wherein the host computing device and the client device exchange data via a wireless network and the data comprises at least one datum relating to at least one of the following: patient satisfaction, a patient diary, patient recruitment, and/or patient activity compliance (see paragraph [0026]); a market survey and/or customer satisfaction with a good or service (see paragraph [0032]); at least one datum relating to a poll (see paragraphs [0007], [0017]).
4. Regarding claims 8, 13, and 16, Flender disclosed the system wherein the data is collected via a survey (see paragraphs [0005], [0007], [0017], [0032]).
5. Regarding claims 9, 14, and 17, Flender disclosed the system wherein the survey is provided on the client device and the data is collected by the host computing device through the wireless network (see paragraph [0016]).

6. Regarding claim 10, Flender disclosed the system wherein the wireless network comprises the internet (see paragraph [0016]).

***Claim Rejections - 35 USC § 103***

7. Claims 1-6 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flender et al. (U.S. Pat. App. Pub. 2003/0204437), hereinafter referred to as Flender, and further in view of Leveque et al. (U.S. Pat. App. Pub. 2002/0128860), hereinafter referred to as Leveque.

8. Flender disclosed a system comprising a host computing device capable of interacting with a wireless network (see paragraph [0015]); and at least one client device capable of interacting with a wireless network (see paragraphs [0016], [0035], [0039]); wherein the host computing device and the client device exchange data via a wireless network (see paragraph [0017]). Flender disclosed the data comprising at least one datum relating to at least one of the following: a market survey and/or customer satisfaction with a good or service (see paragraph [0032]); or at least one datum relating to a poll (see paragraphs [0007], [0017]). Flender further disclosed the system wherein the data is collected via a survey (see paragraphs [0005], [0016], [0017]).

9. While Flender disclosed exchanging data comprising a market survey, customer satisfaction with a good or service, or at least one datum relating to a poll, Flender did not specifically disclose exchanging data comprising at least one datum relating to a clinical trial.

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10. In a related art of data management and collection, Leveque disclosed a system similar to Flender which involved collecting survey data electronically through the Internet via the transmission of e-mail messages (see paragraph [0044]). Most importantly, Leveque disclosed transmitting survey data relating to a clinical trial as claimed (see paragraphs [0044], [0046], [0049], [0066]).

11. It would have been obvious to one of ordinary skill in the art at the time of invention to combine the teachings of Flender and Leveque to provide a system for exchanging survey data through the Internet between a wireless client and host via e-mail, the data comprising data relating to a clinical trial as claimed, as the transmission of clinical trial data in such a manner was well-known in the art. One of ordinary skill would have been motivated to combine the teachings as both sought to improve the way in which survey data was processed. Leveque provided a way to aggregate complex survey data (see paragraphs [0006]-[0024]), a feature desirable in Flender regarding timely evaluation of survey data (see paragraph [0006]).

### ***Response to Arguments***

12. Applicant's arguments filed 05/01/06 have been fully considered but they are not persuasive.

13. Regarding claim 20, Examiner acknowledges the cancellation of the claim. Rejection of the claim under 35 U.S.C. 101 has been withdrawn.

14. Regarding claims 7-17 rejected under 35 U.S.C. 102(b) as being anticipated by Flender et al. (U.S. Pat. App. Pub. 2003/0204437), Applicant traverses the rejection.

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Applicant asserts that Flender does not teach “that the host computing device and the client device exchange data via wireless network and the data comprises at least one datum relating to at least one of the following: patient satisfaction; a patient diary; patient recruitment; and/or patient activity compliance”. Specifically, Applicant asserts that nowhere in Flender does the word “patient” appear. Examiner submits that this analysis does not clarify any novel distinction between the claims and the material referenced in the rejection of the claims any more over a mere analysis of word choice. While Applicant notes specific words not mentioned in the reference, it is submitted that regardless of this fact, the reference reads upon the broad concepts set forth in the presented claims as noted in the above rejection. The claim language, including the language of the dependent claims, does not define the various terms of “patient satisfaction; a patient diary; patient recruitment; and/or patient activity compliance”, nor does it require any specific functionality for these various pieces of data other than that they are exchanged via a wireless network between a host device and a client device, all of which is taught by the prior art of record. For example, Examiner submits that the “ranking of educational institution” (see paragraph [0040]) disclosed by Flender reads on, for instance, the claimed “patient satisfaction”, a reasonable interpretation that is afforded by the breadth of the claim language presented. In fact, as the claims do not require any specific functionality of the various types of claimed data, it is submitted that Flender fully lies within the scope of the claimed invention since “Any number of questions can be posed in the survey” (see paragraph [0039]).

15. Regarding claims 12 and 15; Applicant further asserts that Flender fails to disclose “the host computing device and the client device exchange data via a wireless network”, stating that Flender only discloses that the survey engine can communicate survey response data to the lead engine, which constitutes a “one way passage of data”. Examiner disagrees, as Flender disclosed communications between the survey engine and the lead engine comprising a web-based platform (see paragraph [0020]), or other forms of communication (see paragraph [0039]) that inherently support a bidirectional network connection. Additionally, Applicant argues that the word “exchange” does not appear in Flender. Similar to the argument above, Examiner submits that this analysis does not clarify any novel distinction between the claims and the material referenced in the rejection of the claims any more over a mere analysis of word choice. Clearly, the disclosed communications between the survey engine and lead engine read upon the broad concept of exchanging data as claimed.

16. Regarding claims 1-6, 18, and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Flender et al. (U.S. Pat. App. Pub. 2003/0204437) in view of Leveque et al. (U.S. Pat. App. Pub. 2002/0128860), Applicant asserts that Flender only discloses that the survey engine can communicate survey response data to the lead engine, thus failing to teach “the host computing device and the client device exchange data via a wireless network” or “exchanging data between the host computing device and the client device via a wireless network” as claimed. As stated above, Examiner submits that the various communications between the survey engine and the lead engine disclosed by Flender (see paragraphs [0020], [0039]) inherently support a bidirectional

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network connection and thus read on the claim language. Further to this point, Applicant asserts that Leveque fails to disclose a wireless network, and that there is no mention of the word "wireless" anywhere in Leveque. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Examiner submits that a wireless network is clearly taught by the combination of references. Furthermore, similar to the argument above, Examiner submits that this analysis does not clarify any novel distinction between the claims and the material referenced in the rejection of the claims any more over a mere analysis of word choice. A wireless network is clearly taught by Flender (see paragraph [0039]) and the mere fact that the word "wireless" appears nowhere in Leveque is not persuasive.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any



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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph R. Maniwang whose telephone number is (571) 272-3928. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JM

  
ARIO ETIENNE  
SUPERVISORY PATENT EXAMINER